



POLICE DEPARTMENT

April 26, 2021

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2019-19991

Police Officer Ronnie Caraccioli :

Tax Registry No. 936301 :

28<sup>th</sup> Precinct :

-----X  
At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Jonathan Fogel, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10th Floor  
New York, NY 10007

For the Respondent:

Stuart London, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

1. Police Officer Ronnie Caraccioli, on or about August 1, 2017, at approximately 1817 hours, while assigned to the 028 PCT and on duty, in the vicinity of the lobby of and in front of 40 Morningside Avenue, New York County, wrongfully used force, in that he pushed Elizabeth Borges to the ground without police necessity.

P.G. 221-02, Page 2, Prohibition 11 USE OF FORCE

2. Police Officer Ronnie Caraccioli, on or about August 1, 2017, at approximately 1817 hours, while assigned to the 028 PCT and on duty, in the vicinity of the lobby of and in front of 40 Morningside Avenue, New York County, wrongfully used force, in that he forced Elizabeth Borges' arm behind her back, causing it to break, without police necessity.

P.G. 221-02, Page 2, Prohibition 11 USE OF FORCE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me remotely on March 8, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Elizabeth Borges as its witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1 and 2 and recommend a penalty of the loss of 15 vacation days and 10 suspension days.

## ANALYSIS

It is undisputed that on August 1, 2017, at approximately 1830 hours, the complainant, Elizabeth Borges, was visiting an apartment building located in Manhattan. Police were called to the building due to an alleged dispute concerning property. Borges and a female resident (hereinafter "Resident") were both in the lobby when Respondent and his partner, Officer Zhou, arrived. Respondent and his partner spoke to both Resident and Borges. Resident told Respondent that Borges had been using crack and loitering in the lobby for a week. Borges and

Respondent had physical contact. Borges went to the ground. A struggle ensued, during which Borges' arm was broken while Respondent was attempting to handcuff her. Respondent immediately radioed for an ambulance, which arrived after approximately 10 minutes. The issues in this case are whether Respondent used excessive force in pushing Borges to the ground and whether he caused her broken arm.

Elizabeth Borges testified that she is five feet tall and weighed 85 pounds at the time of the incident. She has spastic cerebral palsy, which makes her walk with a limp. She smokes marijuana with a prescription, because it soothes her condition. She does not "get high" from marijuana, which she takes every day, and instead feels only pain relief. She was at the apartment building with her boyfriend, [REDACTED]. They were there to meet a resident, (hereinafter "Person A"), for whom they had been doing promotional and handyman work. She and [REDACTED] her boyfriend had stayed at Person A's home some nights, because they were living on Long Island and it was more convenient to sleep over while they were working for him in Manhattan. Borges and [REDACTED] her boyfriend were having a dispute with Person A about money and the return of [REDACTED] tools. Borges testified that she called the police for assistance. (Tr. 30-33, 55-56, 61-64)

Borges stated that Respondent and Zhou arrived as she was in the lobby, holding open the inner door, which people ordinarily need to buzz in order to gain entry. Resident entered at the same time and told the officers that Borges and [REDACTED] her boyfriend were "loitering in the hallway for the past week" and smoking crack. Borges asserted that she had never seen Resident before that day, although she had seen her approximately 10 minutes prior earlier that day. After hearing Resident's allegations, the officers told Borges that she and [REDACTED] her boyfriend were trespassing and needed to leave. Borges was "offended" by the false allegation and wanted the police to check the apartment and look for Person A. She attempted to show proof on her phone of the conversation with Person A in order to convince Respondent, but he would not listen. Borges was confused

and upset by Respondent's and Zhou's actions, because they were there for her call and appeared to be taking Resident's accusations seriously without listening to Borges' explanations. (Tr. 33-35, 60, 67-68, 90)

Borges further testified that she was gathering her bags to leave and Respondent said something to her, to which she replied, "Please go check out Person A." She re-entered the lobby but did not touch the officers. When she saw Respondent step towards her and start putting on gloves, she subconsciously noticed his actions and consequently stepped backwards. Borges recounted that she was very confused at the time, as she was not told she was under arrest until she was in handcuffs. She volunteered that she was "resisting" and "flailing on the ground," but claimed that she did so because she was unaware she was under arrest, and instinctively struggled against being grabbed. She characterized her actions during the physical struggle as "fight or flight" and claimed not to have tried to overpower anyone. (Tr. 78-81, 100-101, 121-122)

Borges alleged that Respondent hit her arm with the baton, causing her to cry, but that this action was not visible in the footage because it was blocked by bars in the door. Borges conceded that she cursed at the officers but also said, "I always defended the NYPD and this is how you treat us." She claimed that she was flipped over and Respondent turned her left arm around and stretched it out. The underside of Borges' arm was facing upwards. While Borges was on the ground, she tried to bite Zhou's hand because it was on her neck. She recalled having a "burning, tingling" feeling in her arm. She heard her boyfriend say, "Wow, you broke my girlfriend's arm... You fucked up." According to Borges, Respondent answered, "Do you want some too?" (Tr. 35-42, 53, 81, 85-86, 100, 109, 113-115, 121-122)

Borges testified that when additional officers arrived, they told her that her arm was not broken. After 10 minutes, an ambulance came and she was told that her arm was in fact broken.

Borges ultimately spent five days in the hospital, where she underwent surgery. Borges described experiencing a sharp, tingling sensation in her arm before her surgery. She felt that she needed to keep it close to herself because she could essentially feel her bones moving around. (Tr. 38-40, 54, 117)

Borges reported the incident to IAB the same day because she felt that she had been the victim of excessive force. Borges was charged with disturbing the peace and resisting arrest, but she stated that the charges were eventually dismissed after a few court appearances. She received a settlement of approximately \$100,000 from the City for the injuries she suffered during the incident. She explained that she ultimately kept approximately \$80,000 after factoring in expenses. (Tr. 40, 55, 123)

CCRB entered into evidence photographs of the injuries that Borges suffered, taken after her release from the hospital. The images depict a large purple and red bruise on her elbow and upper forearm. (CCRB Ex. 2A-B, Tr. 42)

Hospital records were also admitted into evidence. They showed that Borges sustained a fractured left humerus. She had surgery to repair the fracture. (CCRB Ex. 1A)

Respondent denied any use of excessive force, claiming that he used only reasonable force to remove an uncooperative Borges from the building. Respondent, who is 5'10" tall and weighed 215 pounds at the time, preliminarily detailed that he received a call about a dispute. Upon arrival, he encountered Borges' boyfriend, [REDACTED] who explained that he had had a dispute about property and not getting paid. Respondent told him that he could not enter the apartment without probable cause and that the issue appeared to be a civil matter. However, Respondent entered the lobby in an attempt to be of assistance anyway. He recalled that Borges was holding open the inner door and he assumed she was a resident. However, soon a woman, Resident, began making accusations that Borges was "a crackhead" loitering. Respondent felt

more sympathetic towards Borges initially, but asked her to leave the building because Borges and Resident began arguing and using foul language in front of Resident's young child. He yelled at Resident to go upstairs to her apartment and told Borges, who was very angry and upset, to step outside. Respondent testified that when he told Borges to step outside he was not kicking her out of the building because he did not think he had the right to do that if she was invited inside by someone. Borges did take her bags and exited the building. (Tr. 130-134, 145-146, 163, 183)

Respondent acknowledged that he knew Borges had a disability when he saw her leaving the building, because she was limping. He denied touching Borges as she left the building and admitted that she did not touch him either. Very shortly after leaving, Borges opened the lobby door, screaming obscenities. She did not tell Respondent to investigate Person A. Resident was no longer in the lobby at this point. Respondent thought Borges might hit him or Zhou, throw something, or forcibly enter the building, although he conceded that the inner door lock would have prevented Borges from entering. Respondent testified that after Borges was cursing at him, "...I want her to leave, because I don't want to deal with her especially after we told her several times to step outside, but she's not listening because I kept telling her, ma'am step outside. ...I just wanted her not to come inside, because she might have gone - -because of her state of mind, she was already angry and I don't want to have a confrontation with her." (Tr. 134, 161-162, 184, 188)

To stop Borges from reentering the building, Respondent pushed her back. Before doing so, he put on gloves because he did not want to have contact with her with his bare hands. Respondent stated his intent was to, "prevent her from coming in and . . .harassing us in a sense she was yelling at us, she was using profanity and I kept telling her just to step outside." Respondent then approached Borges. He testified that Borges put her hands on his chest and

started kicking him. When shown CCRB Ex. 4C at 23 to 27 seconds, he testified Borges kicked him five to seven times during this time before she is on the ground. He also testified that he did not feel that Borges was a threat at the time. Respondent further testified that Borges was punching him while she was still standing up. His memo book entry concerning the incident also noted that Borges punched him. However, Respondent prepared a Threat, Resistance, Injury report and did not check the box to indicate that Borges used any hand strikes against him. (Tr. 134-139, 147-153, 161, 189, 208-213)

Although he never told Borges she was under arrest, he said, “That’s it,” before conducting a “control takedown” because, “she’s trying to get away from me. So I’m holding onto her so she won’t get hurt just in case we fall down and I’m trying to gently sit her down on the floor.” In his CCRB interview from October 3, 2017, Respondent stated that it was unintentional that Borges went to the ground. Respondent stated that he took the height and weight differential into account when using force and tried to handcuff her without hurting her. He tried to pull Borges’ arm and extend it while rolling her on her stomach in an effort to gain compliance. He was having difficulty controlling her because, despite her small size, she was resisting and flailing. Respondent emphasized that he tried to use the least amount of force possible, which is why he did not employ his asp or mace against Borges. Respondent did take out the asp and pointed it at the boyfriend because he was running toward him. The boyfriend then stopped and told Borges, “Honey, stop resisting...listen to the cops.” (Tr. 136-139, 170, 187-188, 206, 210-212, 213)

Eventually, Zhou got Borges’ right arm handcuffed and Respondent was trying to get her left arm handcuffed as well. Borges was “violently flailing her arm” and moving it forward while Respondent was trying to move it backwards. At that moment, Respondent heard a snap. When he realized he had broken Borges’ arm, he was “literally horrified” and released her

immediately. Respondent asserted that he was “yelling like a mad man” for an ambulance and was so upset that MOS on the radio feared he had been shot. When he tried to tell Borges that an ambulance was coming, she cursed and called him a “fucking pig.” (Tr. 139-141)

Video evidence (no audio component) from multiple security cameras captured portions of the incident.

- 18:27:51—Resident appears with her dog and young child at the first door. (CCRB Ex. 4A/4C<sup>1</sup>)
- 18:28:00—Respondent and Zhou approach and Resident gesticulates towards Borges. (*Id.*)
- 18:28:07-17—Resident walks past Borges into the building. Borges, Respondent and Zhou all follow. (*Id.*)
- 18:28:11-18:28:34—After entering the building’s hallway, Resident turns and says something to the officers. Borges also walks into the hallway, followed by the officers. Respondent turns to Borges and appears to point to the front of the building. (CCRB Ex. 4B)
- 18:28:34-57—There is a conversation between Resident, Borges and the officers. Respondent points Borges to the building’s lobby and exit. Zhou opens the door for her. Meanwhile, Resident walks to the elevator. Respondent next approaches the elevator and speaks to Resident before turning his attention back to Borges. (*Id.*)
- 18:28:57-18:29:41—Respondent talks to Borges near the door and gestures towards the lobby. Borges continues talking in an excited manner. Resident steps in the elevator. Borges picks up her bags and walks to the lobby while continuing to speak. (*Id.*)
- 18:29:40-48—Respondent and Zhou walk behind Borges as she leaves through the outer door. (CCRB Ex. 4A/4C)
- 18:29:48-55—Borges places her bags on the ground outside the building, turns towards the officers and claps and speaks to them in an animated fashion. Respondent and Zhou walk back into the lobby. Respondent takes off his gloves. (CCRB Ex. 4A/4C)
- 18:29:55-18:30:03—Borges pulls open the door, leans into the lobby, points her right arm and finger toward the officers and appears to yell at them with an upset facial expression. Respondent puts on his gloves. (*Id.*)
- 18:30:03-07—Respondent puts his left hand on Borges’ right arm. She falls backwards onto her buttocks on the concrete floor outside the outer door. (*Id.*)
- 18:30:08-14—Respondent and Zhou both try to restrain Borges as she flails on the ground. Zhou initially grabs Borges’ upper body while Respondent holds her legs. The boyfriend walks into view and raises his hands into the air. (*Id.*)

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<sup>1</sup> Ex. 4C is an excerpt from Ex. 4A.



- 18:30:14-24—Respondent drops Borges' legs and gestures towards her boyfriend with an asp. The boyfriend backs away. Respondent then returns to Borges, who is lying on her back, and drops the asp. He grabs her left arm while Zhou holds her right arm. (*Id.*)
- 18:30:24-37—Borges continues resisting while the officers hold her arms. Respondent and Zhou attempt to get her hands together. (*Id.*)
- 18:30:37-56—Respondent, still holding Borges' left arm, attempts to roll Borges onto her stomach. Respondent abruptly releases Borges and gets to his feet. He then pulls out his radio and speaks into it. Borges sits up, holding her arm, while Zhou holds the handcuff that had been attached to Borges' right arm. Her boyfriend can be seen standing nearby, yelling. (*Id.*)
- 18:33:04—By this point, numerous MOS have arrived on scene, including two in plain clothes and a supervisor in a white shirt. (*Id.*)
- 18:40:25—MOS help Borges to her feet and into an ambulance. (*Id.*)

Respondent has been charged with wrongfully using force to push Borges to the ground and then forcing her arm behind her back causing it to break. Under Patrol Guide Section 221-01, Uniformed Members of Service ("MOS") may use force when necessary to ensure the safety of a MOS or third person, or to otherwise protect life, or when reasonable to place a person in custody or prevent escape. The Patrol Guide states, "In all circumstances, any application or use of force must be reasonable under the circumstances." This section of the Patrol Guide also lists factors to take into consideration in determining if the use of force is reasonable. These factors include the nature and severity of the crime, the actions taken by the subject, the duration of the action, the immediacy of the perceived threat or harm, whether the subject is actively resisting custody, whether the subject is attempting to evade custody by flight, the number of the subjects in comparison to the number of MOS, and the size, age, and condition of the subject in comparison to the MOS. The Patrol Guide also states that when appropriate, MOS will use de-escalation techniques to reduce or eliminate the necessity to use force.

In applying the factors to this case, I find that Respondent's use of force was unreasonable. First of all, and most troubling, Respondent failed to articulate any immediate

threat or harm posed by Borges at the time of his push. To the contrary, he specifically testified that he did not believe she was a threat at the time before she went to the ground. The video evidence also does not show Borges as an immediate threat to anyone. Resident had left the lobby and there were no other bystanders in the immediate vicinity. While Borges certainly appeared to be agitated and was gesticulating towards Respondent, she did not run or walk towards him. Borges stood in the doorway, and after initially taking a step forward, backed up and remained at the threshold of the doorway. Her bags remained on the ground outside the building in another indication that she did not intend to fully enter the building. It was Respondent who interrupted his attempt to enter the second door of the building, turned around, put his gloves on indicating he anticipated physically touching Borges, and walked back across the lobby to stand directly in front of Borges and push her to the ground. In sum, it was Respondent who turned the encounter from a verbal confrontation with an agitated individual into a physical altercation.

Second, was a significant size disparity between Respondent and Borges. Respondent admitted that Borges was not only much smaller and weighed a lot less than him but that he was also aware before he physically engaged with her that she had a physical disability. Third, Respondent had a partner standing right next to him to assist him if needed when he physically engaged with Borges. Borges was alone at the entrance to the lobby.

With regard to the nature or severity of the crime, it is not clear that any crime actually was committed by Borges before the initial physical encounter with Respondent. There was no trespass according to Respondent's own assessment of the situation as he did not think he had the right to exclude her from the building where she had been invited by a tenant.

Respondent's assertion that Borges had punched and kicked him before he decided to arrest her is not born out by the video evidence. There are no punches thrown by Borges. There

are also no kicks of Respondent by Borges before she is pushed to the ground. Although Respondent is standing in front of Borges, possibly blocking a view of her hand pushing him, he does not recoil from her at any time while they are in the doorway. Respondent clearly reached out, grabbed Borges' shoulder and in a split second she was down on the ground. At the time he grabbed her arm it was down by her side. Also Respondent's failure to indicate that Borges used any hand strikes in the TRI report he prepared belied his assertion that she physically struck him before he pushed her to the ground.

Based on the totality of the evidence in this case, I do not find any reasonable justification for Respondent to push Borges to the ground. I therefore find Respondent Guilty of Specification 1.

With regard to Specification 2, Borges was resisting arrest while she was on the ground, but she would not have been in this position but for the fact that Respondent wrongfully used force to push her down. Therefore, this specification need not be analyzed separately. Respondent in wrongfully initiating the use of force and using an unreasonable amount of force in pushing Borges, led directly to Borges being on the ground. This in turn led directly to Borges' arm being broken during Respondent's attempt to handcuff her. Under the circumstances, it would be counterintuitive to determine that the force used to break her arm was reasonable when there was no reasonable use of force against her in the first place. The injury caused was not incidental to an appropriate use of force. I therefore find Respondent Guilty of Specification 2.

## PENALTY

In order to determine appropriate penalties, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines ("Disciplinary Guidelines"), considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record

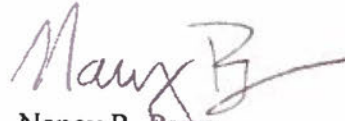
evidence. Respondent's employment record was also examined (*See* 38 RCNY § 15-07).

Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

CCRB stated that prior to trial, it had recommended a penalty of 13 days. At trial, the CCRB APU prosecutor cited case precedents for penalties ranging from 15 days to 20 days. With regard to the Disciplinary Guidelines, CCRB pointed to the presumptive penalty for physical force resulting in injury as being 10 penalty days and 10 suspension days, and argued that there were aggravating factors based on the severity of the injury, the size and strength differences between Respondent and Borges, Borges' disability, and the presence of a partner to aid Respondent. Conversely, the defense argued there were mitigating factors in this case including that the harm that resulted was incidental to an appropriate use of force, that Borges was actively resisting arrest, and that Respondent's use of a control takedown was an attempt to deescalate the situation.

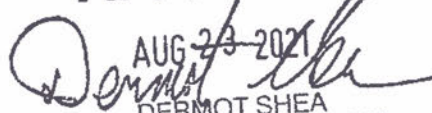
This Tribunal finds that while active resistance may be a potential mitigating factor in force cases, Borges' active resistance only occurred after Respondent's unlawful use of force in pushing her to the ground and it therefore is not an applicable mitigating factor here. Since the severity of an injury may be an aggravating factor, the injury in this case, while not rising to the level of serious physical injury, was a significant injury requiring a hospital stay and surgery to repair the damage. The Tribunal therefore recommends the imposition of a penalty of the loss of 15 vacation days and 10 suspension days. Respondent has not served any previous suspension days related to this case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Nancy R. Ryan".

Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

A handwritten signature in dark ink, appearing to read "Dermot Shea".

AUG 23 2021  
DERMOT SHEA  
POLICE COMMISSIONER



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER RONNIE CARACCIOLI  
TAX REGISTRY NO. 936301  
DISCIPLINARY CASE NO. 2019-19991

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, Respondent twice received 4.5 overall ratings of “Extremely Competent/Highly Competent” for 2014 and 2016, and once received a 4.0 rating of “Extremely Competent” for 2015.

Respondent has no formal disciplinary record. In connection with the instant matter, Respondent was placed on Level I Force Monitoring on June 24, 2020. Monitoring remains ongoing.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials